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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,561	11/26/2003	James R. Barber	3050-137	9953
7590	11/26/2004		EXAMINER	
Woodard, Emhardt, Moriarty, McNett & Henry LLP Bank One Center/Tower Suite 3700 111 Monument Circle Indianapolis, IN 46204-5137			TRETEL, MICHAEL	
			ART UNIT	PAPER NUMBER
			3673	
DATE MAILED: 11/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/723,561	BARBER, JAMES R.
	Examiner	Art Unit
	Michael Trettel	3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 March 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 36-40 is/are allowed.
 6) Claim(s) 1-6,9,10,14,16,18,20,22,24-26,29-35 and 41 is/are rejected.
 7) Claim(s) 7,8,11-13,15,17,19,21,23,27,28,42 and 43 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 26 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/1/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1 to 4, 6, 9, 10, 14, 20, 22, 24, 25, 29, 34, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Wells (US 6,353,952 B1). Wells shows a posturized spring core 12 for use within a mattress or box spring that comprises an assembly of coil springs 20 separated into zones of differing resilience. Each zone has a set of coil springs, either short springs 23 or tall springs 24 each of which correspond to heights H1, H2. The springs terminate at a constant bottom plane P2 with an upper top plane p1 corresponding to the taller height H2. Filler sections 14 made from polyurethane foam fill the gap between the shorter height H1 and the taller height H2. A second embodiment is shown in Figure 2A, in which a bottom plane P4 is created that also uses filler blocks of foam with the coil springs being set to extend evenly from a midplane. The claims do not preclude the use of the filler blocks, and since the "wherein" clause used as the final paragraph of claim 1 does not constitute a positive

structural limitation that defines over the structural features shown in the Wells patent the claims are anticipated.

Claims 1 to 6, 9, 10, 14, 16, 18, 20, 22, 24, 25, 29, 31, and 33 to 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Mossbeck et al (US 6,813,791 B2).

Mossbeck et al shows a posturized spring mattress core 12 that is somewhat similar to the Wells core, with the main exception being that the coil springs 30 are encased in fabric pockets 36 as is well known in the bedding industry. The mattress core is formed with at least two sections of pocketed springs of differing heights H1, H2 extending from a common base plane as shown in Figure 1A. A second embodiment shown in Figure 2A has at least two sections of springs of differing height extending from a common midplane, such that the ends of the springs in adjacent sections terminate in differing planes. As noted above, the "wherein" clause of claim 1 does not preclude the use of the filler sections of foam used in the Mossbeck spring core.

Claims 25, 26, 29, 30 to 32, and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Barber (US 6,398,199). Barber shows a posturized spring core 1 made from a set of pocketed heat tempered coil springs 20, 20' (column 4, lines 1 to 12). The firmness of differing sections of the core can be set by using springs of differing initial heights, which are then pocketed to a common height as set forth in column 6, lines 1 to 22. This creates at least one section of springs which are compressed more than the second set, with the first set then being firmer as a result of the compression. Note the

teachings set forth in column 6, lines 23 to 31, wherein the firmness of the springs can be adjusted by using springs of differing diameters encased in sets of pockets.

Allowable Subject Matter

Claims 7, 8, 11 to 13, 15, 17, 19, 21, 23, 27, 28, 42, and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 36 to 40 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Golembeck show posturized coil spring mattress cores that are of general interest. The US application to Grothaus shows a coil spring mattress core that uses springs of differing heights that are of general interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone

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number for the organization where this application or proceeding is assigned is (703)
872-9306.

Any inquiry of a general nature or relating to the status of this application or
proceeding should be directed to the receptionist whose telephone number is 703-308-
1113.



Michael Trettel
Primary Examiner
Art Unit 3673